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DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka
CHRISTENE COHEN), *in personam* and
F/V POINT LOMA, Official Number
515298, a 1968 steel-hulled, 126-gross ton,
70.8- foot long fishing vessel, her engines,
tackle, furniture, apparel, etc., *in rem*, and
Does 1-10,

Defendants.

And Related Counterclaims

Case No.: CV 07-02952 WHA

**DEPOSITION EXCERPTS OF
BARRY COHEN READ INTO
EVIDENCE AT TRIAL, MAY 22,
2008, AND REFERENCED EXHIBITS**

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BARRY ALLEN COHEN

January 9, 2008

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

DEL MAR SEAFOODS, INC.,)	
)	
Plaintiff,)	
)	
vs.)	NO. C-07-2952-WHA
)	
BARRY COHEN, CHRIS COHEN (aka)	
CHRISTENE COHEN), in personam)	
and, F/V POINT LOMA, Official)	
Number 515298, a 1968)	
steel-hulled, 126-gross ton,)	
70.8 foot long fishing vessel,)	
her engines, tackle, furniture)	
apparel, etc., in rem, and)	
Does 1-10,)	
)	
Defendants.)	
_____)	

DEPOSITION OF
BARRY ALLEN COHEN

January 9, 2008

REPORTED BY: RITA R. LERNER, CSR #3179 (2001-404170)

BARRY ALLEN COHEN

January 9, 2008

<p>58</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you agree with all of that?</p> <p>4 A. Yes.</p> <p>5 Q. Then it said, "The amount owed as of December</p> <p>6 2001 for these advances was \$16,394.75."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you agree with that?</p> <p>10 A. I don't disagree with it.</p> <p>11 Q. "Therefore the total owed to Cappuccio was</p> <p>12 \$78,398.75," which is "(\$62,004, plus \$16,394.75)."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you agree with that?</p> <p>16 A. Sitting here today, I do not disagree with it.</p> <p>17 Q. "According to Barry's" -- it continues,</p> <p>18 "According to Barry's records, Joe advanced</p> <p>19 \$111,715.78 cents for boat improvements."</p> <p>20 Do you see that?</p> <p>21 A. I see that.</p> <p>22 Q. Do you disagree with it or agree with it?</p> <p>23 A. I don't disagree with it. I don't understand</p> <p>24 it at this moment.</p> <p>25 Q. Okay. Does that refresh your recollection that</p>	<p>60</p> <p>1 asked for. It's in there. I didn't take anything out.</p> <p>2 Q. Is it true, then, that the amount secured by</p> <p>3 the preferred mortgage -- or the amount under the</p> <p>4 promissory note and secured by the preferred mortgage</p> <p>5 relates not just to boat improvements, but to personal</p> <p>6 loans and fishermen advances that you owed to Del Mar?</p> <p>7 A. Without saying the amounts of anything, I would</p> <p>8 say that's probably true. However, I don't think we</p> <p>9 need to go exactly by these titles, because there's</p> <p>10 going to be some mixed up things in there.</p> <p>11 MR. POULOS: It's noon. Let's take, say, a</p> <p>12 40-minute lunch break.</p> <p>13 (Lunch recess from 12:02 to 12:48;</p> <p>14 Present: Mr. Poulos, Mr. Walsh, and the</p> <p>15 witness)</p> <p>16 MR. POULOS: Q. When we took a break for</p> <p>17 lunch, we were talking about the source of the \$215,000</p> <p>18 in debt that is under the promissory note. Do you</p> <p>19 remember that?</p> <p>20 A. Mm-hmm, yes.</p> <p>21 Q. And if you take a look at Mr. Cantrell's</p> <p>22 memorandum, Exhibit 2, on page 2 we were looking at the</p> <p>23 bullet points there; correct? On page 2 there's bullet</p> <p>24 points "Mexican fishing permit," "boat improvements,"</p> <p>25 "personal loans"?</p>
<p>59</p> <p>1 you actually had and maintained records showing the</p> <p>2 expenditures for boat improvements?</p> <p>3 A. Oh, I never said I didn't.</p> <p>4 Q. Do you have them still?</p> <p>5 A. I'm sure we do. I did not dispose of any.</p> <p>6 Q. Do you know if you have produced them in this</p> <p>7 case?</p> <p>8 A. I have.</p> <p>9 MR. WALSH: Yes, we made them available to you.</p> <p>10 They're sitting waiting for you to investigate. They're</p> <p>11 part of the records that were available that we tried to</p> <p>12 arrange for Max to see last week. They're all there for</p> <p>13 you to see.</p> <p>14 MR. POULOS: Q. How are those arranged down in</p> <p>15 Avila Beach?</p> <p>16 A. On two pallets and one full file cabinet four</p> <p>17 drawers high.</p> <p>18 Q. Do you have a file for boat improvements that</p> <p>19 were made and paid for?</p> <p>20 A. I doubt it.</p> <p>21 Q. So in order to get those records, we've got to</p> <p>22 go through two pallets and a file cabinet worth of</p> <p>23 documents?</p> <p>24 A. Well, I think if you go through two pallets and</p> <p>25 the file cabinet, you're going to get all the things you</p>	<p>61</p> <p>1 A. Yes.</p> <p>2 Q. And "fishing loans."</p> <p>3 In terms of the boat improvements, it then says</p> <p>4 in the memo that your records showed that you had --</p> <p>5 that Joe Cappuccio had advanced \$111,715.78 for boat</p> <p>6 improvements; correct?</p> <p>7 A. That's what this says.</p> <p>8 Q. And you don't have any reason to dispute that,</p> <p>9 do you?</p> <p>10 A. I don't have a reason to dispute it.</p> <p>11 Q. Now, in terms of the personal loans to Barry</p> <p>12 Cohen, is it your testimony that any portion of those</p> <p>13 personal loans were in fact paid to -- used for</p> <p>14 improvements of the Point Loma?</p> <p>15 A. I don't think so.</p> <p>16 Q. What were those personal loans used for?</p> <p>17 A. I can't tell you today. I don't know.</p> <p>18 Q. You had signing authority on a bank account for</p> <p>19 the Olde Port Fisheries Division of Del Mar; right?</p> <p>20 A. For the joint venture?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. On a Wells Fargo account; right?</p> <p>24 A. Yes.</p> <p>25 Q. And you wrote checks for the funds used to</p>

16 (Pages 58 to 61)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO

BARRY A. COHEN; LEONARD A. COHEN;
OLDE PORT INN, INC.; and
OLDE PORT FISHERIES, INC.,

Plaintiffs,

vs.

PORT SAN LUIS HARBOR DISTRICT; and
DOES 1 to 50, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

VOLUME III

Pages 340-523

COPY

Case No. CV 040897

DEPOSITION OF BARRY A. COHEN

San Luis Obispo, California

Wednesday, November 16, 2005

10:05 a.m. – 5:23 p.m.

Reported By: Lora L. Shoffstall, RPR, CSR 9271
File No. 206759



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1 copies of.
2 BY MR. MOROSKI:
3 Q. Specifically what documents did you search
4 for? And I'm focusing now on the time period between
5 the last session of your deposition, which was
6 October 14, 2005, and today.

7 A. Anything that I might have missed in your list
8 of document requests.

9 Q. Can you give me specific for instances? Or
10 would it be more helpful for you to go over the
11 specific document requests set forth in the deposition
12 notice?

13 A. No. I read these and looked to try to find
14 them, if there were any, that I did not previously send
15 to you.

16 Q. Okay. With respect to the one document that
17 you found at home, what was that document?

18 A. That was a 1099 from the cable committee for
19 wages other than fishing or joint venture. It was paid
20 from the cable committee.

21 Q. Okay. And what are the documents that you
22 were -- that were provided to you by Mr. Roggio?

23 A. A copy of the promissory note and a list of
24 payments I made on that note.

25 Q. Did you search for any other documents?

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1 A. I explained I searched for all the documents.
2 Those are the ones I found.

3 Q. Okay. Have you made any requests of
4 Mr. Roggio or anyone else at Del Mar Seafoods for
5 copies of the checks to you that relate to the forms
6 1099 that have been produced now?

7 A. Those checks were available at the discovery
8 of the 400 boxes in Avila Beach.

9 Q. How do you know that?

10 A. Because that's where they were kept.

11 Q. In which of the 400 boxes?

12 A. I don't know how to answer that. Which box?

13 Q. Yeah.

14 A. I can't describe it. I wouldn't know.

15 Q. Well, I don't know --

16 A. I would have to look through all 400 boxes and
17 try and find it.

18 Q. You mean there's no name or coding on any of
19 the boxes?

20 A. Well, there probably is.

21 Q. Do you know whether there is?

22 A. I can't think of any boxes that we did not
23 label at the time of discovery.

24 MR. COON: Would looking at an index help?

25 THE WITNESS: I don't know where the location

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1 of each individual box may be at this moment.

2 BY MR. MOROSKI:

3 Q. And what I'm trying to get to, Mr. Cohen --
4 and again, you testified with some emphasis, degree of
5 certainty that the checks backing up the forms 1099
6 from Del Mar were included in the 400 boxes of
7 documents that were made available for my law firm's
8 inspection. And what I'm trying to find out now is how
9 you can say for sure that those checks were included in
10 the boxes.

11 A. That's what I believe.

12 Q. But you don't know for sure, do you?

13 A. Unless somebody removed them, they would be
14 there.

15 Q. Now, we'll get to the actual form 1099s in a
16 few moments, but there are two different -- I'll
17 describe them as different forms 1099: Those forms
18 1099 which designate as the payor Del Mar Seafoods,
19 Inc., Olde Port Fishery Division, and there are also
20 forms 1099 which designates Del Mar Seafoods, Inc.
21 without reference to Olde Port Fisheries Division.
22 Sitting here today, do you understand what, if any,
23 difference exists between those two types of forms
24 1099?

25 MR. COON: Objection. Vague and ambiguous.

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1 THE WITNESS: Sitting here listening to what
2 you say, I can't answer that question.

3 BY MR. MOROSKI:

4 Q. Well, we'll take a look at the documents, and
5 maybe the documents will refresh your recollection.

6 With respect to the forms 1099, do you recall
7 sitting here today whether the checks that were paid to
8 you that are reflected in the totals on the forms 1099
9 were checks that were written and signed at Del Mar's
10 offices in Salinas as opposed to checks written and
11 signed in Avila?

12 MR. COON: Objection. Vague and ambiguous.
13 Assumes facts.

14 THE WITNESS: I can't be sure where the checks
15 were issued.

16 BY MR. MOROSKI:

17 Q. Did you at any period of time or at any point
18 in time during the time frame February 1999 through
19 December 2004 write checks to yourself on accounts
20 established in the name of Del Mar Seafoods, Inc. or
21 Del Mar Seafoods, Inc., Olde Port Fisheries Division?

22 A. You're asking if I ever wrote checks to
23 myself --

24 Q. Correct,

25 A. -- from Del Mar's account?

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1 that's currently operating the Point Loma. Correct?
 2 A. Correct. And it would be last year's income.
 3 Q. Who keeps the books for the Point Loma?
 4 A. I do.
 5 Q. With assistance from anyone?
 6 A. For the end of the year? The end-of-the-year
 7 tax returns I don't do.
 8 Q. That's Mr. Cantrell?
 9 A. Yes.
 10 Q. Mr. Coon has shown you a document. Do you
 11 want to --
 12 A. He wants --
 13 MR. COON: This was that document that was
 14 faxed by Joe Roggio during the break that Mr. Cohen
 15 requested. I think we should make some copies of it
 16 and give you a copy.
 17 MR. MOROSKI: Sure. Can I take a look at it,
 18 please?
 19 Why don't we make a copy of this real quick.
 20 Thanks, Jay.
 21 MR. COON: Can we make two of those, Jay, so
 22 we can have one for us, one for the court reporter and
 23 one for you guys?
 24 MR. ELDER: Okay.
 25 MR. MOROSKI: Exhibits 397 and 398. Thanks

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1 Jay. Do you want to mark this next? That's 401.
 2 THE WITNESS: Do you want --
 3 MR. MOROSKI: Not yet. That --
 4 THE WITNESS: Okay.
 5 MR. MOROSKI: We'll get to that in a second.
 6 (Exhibits 397-398 and 401 were marked for
 7 identification.)
 8 BY MR. MOROSKI:
 9 Q. Can you identify Exhibit 397 for the record,
 10 please?
 11 A. A copy of the promissory note payable to Del
 12 Mar Seafoods that I had sent to you a couple days ago
 13 I received this from requesting it from Joe Roggio.
 14 Q. And the date or the effective date, I should
 15 say, of this note is what?
 16 A. You mean the preferred mortgage date or the
 17 date signed we it?
 18 Q. What is the effective date of --
 19 A. It's the same date.
 20 Q. Which is what?
 21 A. 10/31/03.
 22 Q. And directing your attention to the last page,
 23 the third page of the note. Is that your signature
 24 above the line "Barry Cohen"?
 25 A. Yes.

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1 Q. And is that Chris Cohen's signature?
 2 A. Yes.
 3 Q. Okay. Why was it that you were being asked to
 4 sign a promissory note on October 31, 2003?
 5 A. I don't know.
 6 Q. Were you assessed interest under the terms of
 7 this promissory note?
 8 A. No.
 9 Q. Why not?
 10 A. I don't know.
 11 Q. And with respect to the balance, principal
 12 balance recited in the first paragraph of the notice,
 13 \$215,000, how was that figure arrived at?
 14 A. I think it was a low guess.
 15 Q. A low guess?
 16 A. A guess.
 17 Q. Of what?
 18 A. Of the money that I borrowed for the boat from
 19 Del Mar. But I don't think they knew exactly how much
 20 everything was.
 21 Q. Directing your attention to Exhibit 398. Can
 22 you identify that document for the record?
 23 A. Yes.
 24 Q. Would you do so?
 25 A. It's a Del Mar Seafoods, Inc. schedule of

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1 payments.
 2 Q. And what does the schedule of payments relate
 3 to?
 4 A. What I paid, what the boat owed, what
 5 inventory was owed for Avila, receivable on Olde Port
 6 Inn and on Michael Cohen.
 7 Q. So this document, Exhibit 398, does not relate
 8 to the promissory note?
 9 A. Yes.
 10 Q. It does?
 11 A. Yes.
 12 Q. Okay. How do you account for the different
 13 balances?
 14 A. We don't account for it.
 15 Q. Okay. Can you explain to me why the principal
 16 balance owed under the terms of the promissory note,
 17 Exhibit 397, dated effective October 31, 2003, is
 18 \$215,000, and the beginning balance reflected on this
 19 schedule of payments documents is \$295,429?
 20 A. Because I took the responsibility for these
 21 amounts owed and just put it on mine.
 22 Q. Okay. So the beginning balance does not
 23 relate to the promissory note balance. Correct?
 24 A. No, but it -- it relates to the promissory
 25 note.

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1 Q. Well, I'm looking at all of these figures,
 2 Mr. Cohen, and let's start with Barry, the column
 3 Barry, \$237,035.48. That's the beginning balance.
 4 That doesn't tie with the \$215,000 principal balance
 5 owed pursuant to the terms of the promissory note.
 6 A. Right.
 7 Q. Okay. How does it -- how does that total
 8 relate to the promissory note obligation?
 9 A. I just told you that the \$215,000 was a low
 10 estimate.
 11 Q. Okay.
 12 A. So --
 13 Q. You owed money over and above the \$215,000?
 14 A. Right. But we didn't know how much. This was
 15 just prepared a few days ago. This -- a lot of this
 16 was not known until a few days ago.
 17 Q. And "this," you're referring to Exhibit 398?
 18 A. Yes.
 19 Q. The Michael Cohen beginning balance, what does
 20 that relate to?
 21 A. Money that Michael Cohen owes.
 22 Q. For what?
 23 A. For purchases that he made.
 24 Q. Purchases of what?
 25 A. Of seafood from Del Mar.

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1 Q. Okay. Olde Port Inn, what does that --
 2 A. Purchases.
 3 Q. Of fish?
 4 A. Yes.
 5 Q. Okay. Inventory, what does that relate to?
 6 A. Fish and supplies.
 7 Q. Point Loma, what does that refer to?
 8 A. I think that was an advance or advances.
 9 Q. And the Barry column, what does that beginning
 10 balance number refer to?
 11 A. That was probably the beginning balance of
 12 where I was at the time of this promissory note.
 13 Q. And the total amount, \$237,035, what does that
 14 total include?
 15 A. I couldn't tell you offhand.
 16 Q. Advances?
 17 A. At the time they were not advances, but they
 18 turned into advances. This is what Joe Roggio was
 19 talking about when we were going to go partners in the
 20 boat, and we did a lot of work on the boat to get ready
 21 for Mexico. That was going to be Joe's contribution to
 22 the 50/50.
 23 Q. Joe Cappuccio?
 24 A. Yes.
 25 Q. Okay. Now, regarding the schedule of

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1 payments, you've got a Barry payment on December 22nd,
 2 2004, of \$5,000.
 3 A. Right.
 4 Q. The next payment, I can't read the date, but
 5 the 24th of some month in 2005, American payment, what
 6 is that?
 7 A. A check they received from a fish company
 8 paying them by mistake.
 9 Q. Okay. Olde Port payment on 9/14/05.
 10 A. That's just what it says.
 11 Q. Olde Port Inn?
 12 A. No.
 13 Q. Okay.
 14 A. Olde Port Fisheries.
 15 Q. Okay. And November 10, 2005, payment from
 16 Barry, \$175,000.
 17 A. Yeah.
 18 Q. Okay. You paid Del Mar \$175,000 last week?
 19 A. Last week or the week before.
 20 Q. Okay. And what was the source of the funds
 21 you used to make that payment?
 22 A. Got a second on my house.
 23 Q. What lender did you use?
 24 A. Citibank.
 25 Q. What was the amount of that financing?

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1 MR. COON: Objection. Irrelevant.
 2 THE WITNESS: I believe 250.
 3 BY MR. MOROSKI:
 4 Q. Did you submit a written application for that
 5 second?
 6 A. I did not.
 7 Q. Did someone submit an application on your
 8 behalf?
 9 A. Yes.
 10 Q. Who?
 11 A. John Husten.
 12 Q. And John Husten, at the time he submitted that
 13 loan application on your behalf, was working for Weger?
 14 A. I don't know.
 15 Q. When was the application submitted?
 16 A. I don't know.
 17 Q. When did the transaction close? I'm talking
 18 about this \$250,000.
 19 A. Yeah. I would say a couple weeks ago or so,
 20 two or three weeks ago.
 21 Q. Were you approved for that financing before
 22 the transaction closed, before the loan funded?
 23 A. That's my understanding.
 24 Q. And do you know the exact name of the lender?
 25 You say Citibank. Citibank has a lot of different

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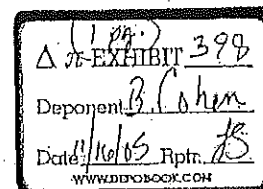
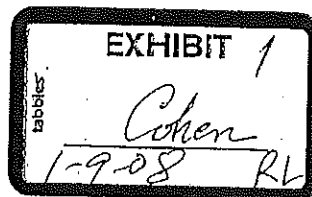
11-15-2005 08:55AM FROM-DEL MAR SEAFOODS INC Om

T-131 P:002/006 F-230

Del Mar Seafoods, Inc.
Schedule of Payments

	Michael Cohen	Old Port Inn	Wyndham	Pratt & Man	Berry	Total
Beginning Balance	13,820.40	10,000.10	10,383.24	10,021.81	207,035.40	205,420.95
12/23/2004 Berry Paymt					(5,000.00)	(5,000.00)
07/24/2005 Amusement Payment			(1,474.75)			(1,474.75)
07/14/2005 Old Port PYMT			(1,000.00)			(1,000.00)
11/10/2005 Inv. Adj.			(1,300.00)			(1,300.00)
11/10/2005 Payment from Berry	(13,420.40)	(10,000.10)	(10,383.24)	(10,021.81)	(120,300.70)	(175,000.00)
Ending Balance					111,034.70	111,034.70

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
TRIAL EXHIBIT 37
CASE NO. CV-07-02952 WHA
DATE ENTERED _____
BY _____
DEPUTY CLERK

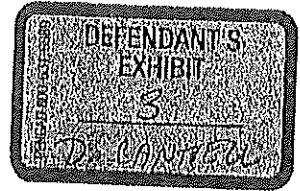


	Michael Cohen	Olde Port Fisheries	Olde Port Inn	Inventory	Point Loma	Barry	Total
Beginning Balance	13,920.40		18,059.10	10,389.24	18,021.31	232,035.48	282,425.33
12/23/2004 Barry Paymt						(5,000.00)	(5,000.00)
8/24/2005 American Payment				(1,474.75)			(1,474.75)
9/14/2005 Olde Port PYMT				(1,000.00)			(1,000.00)
11/18/2005 Inv. Adj				(1,300.00)			(1,300.00)
1/10/2006 Payment from Barry	(13,920.40)		(18,059.10)	(6,508.49)	(18,021.31)	(120,350.70)	(175,000.00)
12/5/2006 Olde Port Balance (see attached)		7,417.57					7,417.57
12/5/2006 Point Loma Balance (see attached)					1,368.82		1,368.82
Fees for Olde Port Case						21,308.52	21,308.52
2/5/2007 Payment						(2,000.00)	(2,000.00)
2/20/2007 Payment						(3,000.00)	(3,000.00)
4/25/2007 Payment						(3,000.00)	(3,000.00)
Ending Balance		7,417.57			1,368.82	119,963.30	128,749.69

Barry Belandier

Ex. 21

[TRIAL EX 38]



DMSI 0111

4/30/2007